

Date: April 10, 2014

To: Thomas J. Bonfield – City Manager

Through: W. Bowman Ferguson – Deputy City Manager

From: Marvin G. Williams – Director of Public Works

Subject: Update on Failed and Struggling Developments

Executive Summary

The Failed and Struggling Development Program was created to assure the completion of all required infrastructure and private stormwater facilities at minimal costs to citizens and the City of Durham. The City of Durham Public Works Department currently oversees the program and is responsible for approximately 83 projects or phases of projects; which span across 23 subdivisions. This update summarizes the following items:

- A. Number of projects per category as of March 17, 2014
- B. List of developments added to program since last update (September 10th, 2013)
- C. Status of current Category 4: Failed developments
- D. Status of Category 3 Projects in Litigation: Stonehill Estates and Ravenstone I & II
- E. Developments successfully completed since last update (September 10th, 2013)

Recommendation

The Public Works department recommends that City Council receive the update on the Failed and Struggling Development Program.

Background

Since late 2008, the economy has drastically changed the manner in which the construction and housing industries operate. These changes have resulted in a country-wide decline in new home sales and overall commercial developments. In addition, banking and financial markets which provided financial assistance to developers, builders, and owners, have undergone changes that have resulted in an environment that is inherently unstable for these customers. This instability has created situations in which some developers are no longer able to sustain developments and are forced to close their businesses or restructure their companies. As a result of the company closings and restructurings, some developers have not completed the street, sidewalk, and stormwater facility infrastructure required for developments.

In response to this situation, the Failed and Struggling Development Program was created in early 2009. The Public Works Department was assigned to oversee this program to assure the completion of required infrastructure.

As developments are added to the Failed and Struggling Developments program, the Public Works Department has placed each into one of four categories of financial distress. Each development has unique circumstances and the tools that are available to help guide one development to completion, may not be available to the same degree in another development. Projects may move from one category to another based on various factors (developer solvency, product sales, assets, construction security amounts, infrastructure to be completed, etc.). The four categories are defined as follows:

- **Category 1- Restructured Developments:** The developer restructured the company or a new developer purchased the project. Projects have appropriate construction securities in place and are completing the required infrastructure.
- **Category 2 – Monitored Developments:** Projects that have shown multiple signs of financial distress. Public Works has been monitoring the development's progress and is working with the Developer to assure completion of the project's infrastructure. The lender will often become part of the discussion to monitor the project in case the project goes into default.
- **Category 3 – Struggling Developments:** The developer has filed for bankruptcy or is unresponsive to Public Works requests to complete the infrastructure. Public Works and the City Attorney's Office will begin obtaining any remaining funds available for completion of the development (either through calling securities or actively pursuing these funds through lawsuits).
- **Category 4 – Failed Developments:** The developer company has functionally dissolved and Public Works has either obtained construction security funds or there were no construction securities available. The Public Works department is working through available options for consideration by City Council to determine the most appropriate way to complete the required infrastructure.

The Public Works Department's most difficult developments to bring to successful conclusion are located in Category 4. These developments may lack sufficient construction security funding to complete the infrastructure required in the project and the development companies are defunct. Construction security amounts were established with prices current at the time of construction, but as developments languished the base price of labor and

materials has increased dramatically. The infrastructure in many of these developments has degraded over time due to the developer's neglect, and in some cases the degradation has been substantial. The cost to repair the degradation increases the cost to complete the developments considerably. Construction security amounts were initially established as reasonable security measures to ensure compliance, not as a total project completion funding source. Accordingly, in most cases the construction securities are insufficient and considerations of other ways to secure funds to complete the infrastructure are necessary.

In 2012, policies were developed by the Public Works Department and approved by City Council to attempt to prevent a repeat of situations like this from occurring in the future. Security amounts have been increased to levels that would appropriately fund completion of the required infrastructure. Monitoring of these securities and amounts occurs annually.

Issues and Analysis

The following updates and information items are provided by the Public Works Department and are current as of March 17, 2014.

A. Number of projects per category as of March 17, 2014

Table 1: Project and Subdivision Totals per Category

Category	Description	Projects or Phases	Number of Subdivisions Represented
1	Restructured Developments	13	6
2	Monitored Developments	18	4
3	Struggling Developments	31	3
4	Failed Developments	21	10
	TOTALS	83	23
	Completed Developments without financial impact to the residents of the projects*	107	30
	Completed Developments with financial impact (ie project will be assessed for completion of infrastructure) to the residents of the projects	1	1

B. List of developments added to program since September 10, 2013

No new developments have been added to the Failed and Struggling Development Program.

C. Status of current Category 4: Failed developments

The Category 4 failed developments are listed below in Table 2. A specific status update for each project follows this table. Attached to this memo in Appendix A are satellite maps with legends indicating the location of the developments, incomplete infrastructure, stormwater facility locations (BMP), and completed infrastructure.

Table 2: Category 4 Summary

Subdivision	Total Lots	Vacant Lots	Security Obtained		Incomplete Infrastructure
			Streets	Stormwater Facilities	
Bay Pointe Phase III	68	0	\$145,000	n/a	Streets
Green Gardens Phase II	70	18	Any Remaining funds from Baypoint III	n/a	Streets
Pearl Knoll	12	6	\$10,000	\$12,000 and \$4,317 (SFA)*	Streets and stormwater facility
Riverside on the Eno	24	13	\$60,000 (\$28,805.25 used to pave the streets)	\$24,000 and \$19,790 (SFA) +\$31,194.75 left from streets	Stormwater facilities and sidewalk
Windermere Ridge Townhomes	42	19	\$10,000	\$60,000	Street and stormwater facilities
Northern Way	13	6	\$14,000	\$42,496	Street, transfer of Stormwater Facility to an active HOA, address maintenance deficiencies,
Forrest Brook	20	1	\$6,000	n/a	Sidewalk only
The Landings at Southpoint Phase 1	2 buildings with 27 apartments each built (1 future building with 103 units remaining)		n/a	\$0	Stormwater facilities

* (SFA): Funds to secure obligations required by Stormwater Facility Agreements

Project Status Updates

1. Bay Pointe Phase III: A sixty eight lot phase of the Bay Pointe subdivision project with all lots completed. The development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. This subdivision has no required stormwater facilities. Please see Green Gardens Phase II below.
2. Green Gardens Phase II: A seventy lot phase of the Bay Pointe Subdivision with eighteen vacant lots left for construction. The development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. This subdivision has no required stormwater facilities. The vacant lots in the subdivision were owned by SunTrust Bank. The Public Works Department facilitated the purchase of the Green Gardens Phase II development. The Public Works Department has successfully negotiated with the new owner of Green Gardens Phase II and will be bringing an agreement forward that would allow the City of Durham to take advantage of the construction in the Green Gardens Project and complete the infrastructure in the Bay Pointe Phase III neighboring subdivision.
3. Pearl Knoll: A twelve lot project with six vacant lots, the development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. The subdivision has a single stormwater facility that must be completed. The vacant lots in the project are owned by BB&T Bank. The Public Works Department had been working with BB&T to resolve the situation, since insufficient security funds exist to complete all of the required improvements. This task has been complicated by the lack of a legally established HOA. BB&T Bank recently sold the Pearl Knoll lots at auction to divest itself of the responsibility of completing this project. The Public Works department will endeavor to work with the new owner of the project to seek a resolution that completes the infrastructure.
4. Riverside on the Eno: A twenty four lot subdivision with thirteen vacant lots owned by BB&T and private owners. The development contains two stormwater facilities that need to be completed. During the 2012 paving season, the Public Works Department completed the streets using approximately half of the money from the construction security collected for this purpose. The remaining funds from the construction security will be used for the completion of the stormwater facilities.
5. Windermere Ridge Townhomes: A forty lot phase of a seven phase townhouse project. The development requires the completion of a street in conformance with City requirements, which includes among other items, repairs to curb and gutter,

utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. The subdivision has a single stormwater facility that must be completed. The completion of the development has been delayed due to bankruptcy and foreclosure for the third time. At the end of the current foreclosure, SouthBank will become the new owner of the project. The unbuilt phases of the development have been purchased by a new owner who will develop these parcels in the future. The Public Works Department, Southbank and the new developer are developing an agreement to use the collected securities so that the infrastructure can be completed in the near future. Once the home owners association agrees to participate in the agreement and to allow access to complete the project infrastructure, the Public Works Department will bring the agreement and stormwater facility agreement forward for City Council Approval.

6. Northern Way: A twelve lot project with six vacant lots, the development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. The subdivision has a single stormwater facility that was completed but not appropriately maintained or transferred to the home owners association. The vacant lots are owned by RCP Investments, LLC and private owners. The Public Works Department has met with developers interested in buying the vacant lots and has explained to them the work required to complete the infrastructure.
7. Forrest Brook: The streets are complete in this subdivision. The only infrastructure that remains to be built is approximately 100 feet of sidewalk and one curb ramp in front of the only vacant lot. Public Works will require the owner of the lot to build the sidewalk and curb ramp prior to releasing the certificate of compliance.
8. The Landings at Southpoint: The first phase of a condominium development, the development contains three stormwater facilities that are unfinished and are currently unmaintained. The project contains no streets, only parking lots. Paragon Commercial Bank has foreclosed on the development rights to the project for the future condominium units. The Public Works Department has met with Paragon Commercial Bank and has explained to them the work required to complete the infrastructure.

D. Status of Category 3 Projects in Litigation: Stonehill Estates and Ravenstone I & II

The securities associated with Ravenstone and Stonehill Estates subdivisions are the subject of a federal declaratory judgment lawsuit brought by the companies that issued the securities. Both the City and the sureties have filed motions for summary judgment. The judge has not ruled on these motions yet.

E. Developments successfully completed since September 10, 2013

1. Everwood: A 58 lot, 2 phase subdivision which began construction in 2006 under David Daniel Homes. David Daniel Homes constructed portions of Phase 1 and Phase 2 before having to surrender the property to the bank in 2010. In late 2010, D.R. Horton Homes purchased the subdivision and began to bring the development back to life. Since then, Public Works has constantly monitored the status of the development to ensure that the subdivision would be completed. Public Works has worked closely with D.R. Horton Homes to complete the remaining infrastructure. The road infrastructure for Phases 1 and 2 was completed during September of 2013. The 2 stormwater facilities for these phases were certified complete and closed out December of 2013.
2. Ashton Hall: A 400 lot, 6 phase subdivision which began construction in 2007 under McCar Homes. McCar homes constructed portions of Phase 1 before going bankrupt in 2009. In early 2010, Beazer Homes purchased the subdivision and began to bring the development back to life. Since then, Public Works has constantly monitored the status of the development to ensure that the subdivision would be completed. Public Works has worked closely with Beazer Homes to complete the remaining infrastructure. The road infrastructure for Phases 1, 3A, 4, 5, and 6 was completed during August of 2013. The 6 stormwater facilities for phase 1, 5 and 6 were certified complete and closed out in January of 2014. The stormwater facilities for Phase 3A, 3B, 4 and remaining facility in Phase 1 are under construction and expected to be completed and certified this year. Phase 3B infrastructure is currently under construction and is continuing to move forward with completion. The remaining Phase 2 is currently moving ahead towards permitting to begin construction of infrastructure.
3. Muirfield Village Phase 2: A 29 lot, second phase of the Muirfield Subdivision which began construction under Lennar Homes. In late 2010, after the Muirfield Village Phase 1 subdivision was completed by the Bank, the second and third phase of the subdivision was purchased by Lennar Homes, which began to bring the development back to life and final completion. Since then, Public Works has constantly monitored the status of the development to ensure that the subdivision would be completed and that the infrastructure in Phase 1 would not be compromised by the construction. The road infrastructure for Phases 2 was completed during January of 2014. There are some additional punch list items in Phase 1 and 2 that remain but these items should be dealt with by the close of June, 2014. The remaining stormwater facility for Phase 2 is being monitored for completion this year. Phase 3 is under construction at this time and Public Works will transfer this subdivision out

of the failed and struggling program as the subdivision is now running efficiently and effectively with home construction at a steady pace.

The Public Works Department continues to coordinate with developers, banks, bonding companies, attorneys, and prospective buyers to complete infrastructure for projects in the Failed and Struggling Development Program. In the future, the Public Works Department will bring to City Council specific projects with recommendations for action when projects have no route to completion other than specific City intervention.

Alternatives

The Alternatives section is not applicable for this update.

Financial Impact

The Financial Impact section is not applicable for this update.

SDBE Summary

The SDBE Summary section is not applicable for this update.